RSA No.543 of 2003.

5.12.2007. Present: Mr.Jagan Nath, vice counsel for the appellants.
Mr.K.D. Sood, counsel for the respondents No.1 to 5 and 9 to 12.
Ms.Anita Dogra, vice counsel for the proposed LRs.

RSA No.543 of 2003, CMP No.925 of 2003 and CMP No.18 of 2004.

This order shall dispose of an application under Section 151 CPC for passing appropriate orders regarding abatement of the appeal due to the death of respondent No.5 Lalo Devi. Notice of the application was sent to the respondents who have not filed reply.

Heard. By means of this application, the applicants/appellants have prayed for passing appropriate orders in regard to the death of Smt.Lalo Devi during the pendency of the appeal before the learned First Appellate Court. It was alleged that Smt.Lalo Devi respondent No.5 died on 19.5.2003, though the death in the copy of death entry has been shown as 29.5.2003. It was alleged that Smt.Lalo Devi died during the pendency of the appeal before the learned District Judge, which was decided on 17.11.2003 and no steps were taken to bring on record the legal representative of the deceased respondent. Thus, it was submitted that the decree in question has been passed against a dead person and as the appeal stands abated in the absence of her legal representatives having not been brought on record.

The fact that respondent No.5 Lalo Devi died on 29.5.2003, as per the copy of the death entry, has not been disputed by the respondents. Thus, it is clear that on the date the case was decided by the learned First Appellate Court, respondent No.5 was already dead and no steps had been taken to bring on record her legal representatives.

Once these allegations have been made that the said respondent Smt.Lalo Devi died during the pendency of the first appeal before the learned District Judge, Una, all these questions and connected questions, if any, are to be determined by the said court only where the lis was pending on the date of the death of the respondent. In arriving at this conclusion, I am supported by the decisions of this Court in two cases, namely, **Pushpa Devi v. Parshotam Singh & ors., Latest HLJ 2004 (HP) 910,** and **Bhika Ram v. Bhagat Ram and others, Latest HLJ 2004(HP) 1015,** wherein such observations were made.

In view of the above discussion, the application (CMP No.925 of 2003) stands disposed of and the judgment and decree passed by the learned First Appellate Court is set aside. The case is remanded back to the learned District Judge, Una for the fresh decision after considering the application filed under Section 151 (CMP No.18 of 2004), which shall be sent to the learned First Appellate Court alongwith the record of the case. The case shall be disposed of afresh after the said application is disposed of according to the law. The parties are directed to appear before the learned District Judge, Una on 10.1.2008.

The appeal stands disposed of accordingly.

In view of the final disposal of the main appeal, all the pending applications, if any, shall also stand disposed of.

December 5, 2007. **(V.K. Ahuja), J.**
(TILAK)